

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:12cv377

**C. H., mother of minor child A.M.,
C.M., father of minor child A.M., and
A.M., a minor child,**

Plaintiffs,

vs.

**ASHEVILLE CITY BOARD OF EDUCATION,
ALLEN JOHNSON, PAUL PERROTTA,
TRAVIS DURHAM, KIMBERLY DECHANT,
THERESA CARTER, KATHY LANE, and
DEE DEE ALLEN,**

Defendants.

ORDER

THIS MATTER is before the Court on the Defendant Asheville City Board of Education's Motion to Dismiss [Doc. 24] and the Motion to Dismiss of Defendants Johnson, Perrotta, Durham, Dechant, Carter, Lane and Allen in their Individual and Official Capacities [Doc. 30].

On November 25, 2012, the Plaintiffs initiated this action alleging violations of the Rehabilitation Act, Americans with Disabilities Act and discrimination pursuant to 42 U.S.C. §1983 as well as nine state law

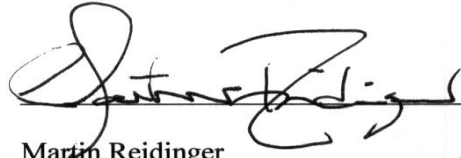
claims. [Doc. 1]. Both motions to dismiss are based primarily on the Plaintiffs' failure to exhaust their administrative remedies in connection with the federal claims. [Doc. 25; Doc. 31]. On May 3, 2013, the Plaintiffs' request for an extension of time within which to respond to the motions was granted and the deadline for responding was set as May 20, 2013. [Doc. 33]. After that deadline the Plaintiffs, without receiving prior permission, filed a response that was improper in several respects. In addition to being filed after the deadline, it addressed both motions to dismiss in the same document and greatly exceeded the page limit specified by the Local Rules. [Doc. 36]. For those reasons the response was stricken by Order of June 3, 2013. [Doc. 38]. The Plaintiffs did not seek reconsideration of that Order and are therefore in default, having failed to respond to the pending motions to dismiss.

This Court has reviewed the motions to dismiss and finds that the grounds stated for dismissal are legally and factually correct. The Court will therefore dismiss this action without prejudice.

IT IS, THEREFORE, ORDERED that the Defendant Asheville City Board of Education's Motion to Dismiss [Doc. 24] and the Motion to Dismiss of Defendants Johnson, Perrotta, Durham, Dechant, Carter, Lane and Allen in their Individual and Official Capacities [Doc. 30] are hereby

GRANTED and this action is hereby **DISMISSED** without prejudice.

Signed: June 19, 2013


Martin Reidinger
United States District Judge

